

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
)
Fleming Companies, Inc., et al.,¹) Case No. 03-10945 (MFW)
) (Jointly Administered)
)
Debtors.)

**ORDER: (A) SCHEDULING THE DATE, TIME AND PLACE
FOR A HEARING ON THE PROPOSED RICHMAR FOODS STORES
ASSET SALE MOTION; (B) APPROVING THE FORM AND MANNER
OF NOTICE THEREOF; AND (C) APPROVING: (i) DEBTORS' AUCTION
PROCEDURES; AND (ii) BREAK-UP FEE [RE: DOCKET NO.]**

Upon the motion of Fleming Companies, Inc. and Richmar Foods, Inc., a wholly owned subsidiary of Fleming ("Richmar"), two of the above-captioned debtors and debtors in possession (collectively the "Debtors") seeking entry of an Order: (A) Scheduling the Date, Time and Place for a Hearing on the Proposed Richmar Food Stores Asset Sale Motion; (B) Approving the Form and Manner of Notice Thereof; and (C) Approving: (i) Debtors' Auction Procedures; and (ii) Break-Up Fee (the "Procedures Motion");² due and

¹ The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

² Capitalized terms not expressly defined herein have the meanings ascribed to such terms in the Procedures Motion, or if not expressly defined therein, in the Asset Purchase Agreement ("Purchase Agreement") annexed as an Exhibit thereto.

adequate notice having been given under the circumstances; it appearing that the relief requested is in the best interest of the Debtors' estates, their creditors, and other parties in interest; it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and after due deliberation and cause appearing therefor; it is hereby

FOUND AND DETERMINED THAT:³

A. The Debtors have articulated good and sufficient reasons for approval of the Debtor's Auction Procedures,

B. The Debtors' Auction Procedures, attached hereto as Exhibit 1, are reasonable and appropriate to maximize the return on the Assets, and

C. The Debtor's proposed notice of the Debtors' Auction Procedures, including the Auction Notice and the Cure Notice, is reasonable.

NOW, THEREFORE, IT IS

ORDERED that the **Procedures Motion** is GRANTED as set forth below; and it is further

ORDERED that the **Debtors' Auction Procedures**, substantially in the form attached hereto as Exhibit 1, are hereby APPROVED, and it is further

ORDERED that the **Auction Notice**, substantially in the form attached hereto as Exhibit 2, is hereby APPROVED as good and sufficient notice of the sale of the Assets, the Auction and all proceedings related thereto; and it is further

ORDERED that the **Cure Notice**, substantially in the form attached hereto as Exhibit 3, is APPROVED as good and sufficient notice to counterparties to executory contracts and unexpired leases of the potential assumption and assignment of the Assigned Contracts and Leases; and it is further

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Statements made by the Court from the bench at the hearing shall constitute additional conclusions of law and findings of fact as appropriate.

ORDERED that the Debtors shall have filed and served the **Sale Motion** upon the persons and in the manner specified in the Procedures Motion no later than **May 12, 2003**; and it is further

ORDERED that the Debtors shall have served the **Auction Notice** (substantially in the form annexed hereto) upon the persons and in the manner specified in the Procedures Motion no later than **May 12, 2003**.

ORDERED that the Debtors shall have sent the **Cure Notice** (substantially in the form annexed hereto) not later than **May 12, 2003** to each counterparty to an executory contract or unexpired lease with any of the Debtors that is to be assumed and assigned to the purchaser; and it is further

ORDERED that the Debtors may, at their option, **publish** a notice substantially in the form of the **Auction Notice** in the Wall Street Journal (national edition) by no later than **May 23, 2003**; and it is further

ORDERED that **objections** or responses, if any, to the relief sought in the **Sale Motion** shall be filed and served so that the objection is actually RECEIVED by all required persons by no later than **May 28, 2003 at 4:00 p.m., prevailing Eastern time**; and it is further

ORDERED that **objections** or responses, if any, to a **Cure Notice**, or any cure amounts stated therein, shall be filed and served so that the objection is actually RECEIVED by all required persons by no later than **May 28, 2003 at 4:00 p.m., prevailing Eastern time**; and it is further

ORDERED that any and all **Qualifying Bids** (as such term is defined in the Debtors' Auction Procedures), other than the bid of Save Mart Supermarkets (the "Buyer"), which is deemed to be made at the Adjusted Estimated Cash Purchase Price (as defined in the Debtors' Auction Procedures), shall be submitted to the Debtors' counsel (with a copy to the Creditor's Committee's counsel and the Debtors' post-petition lenders) at the respective

addresses set forth in the Debtors' Auction Procedures so that they are RECEIVED no later than **May 28, 2003 at 4:00 p.m., prevailing Eastern time**; and it is further

ORDERED that the Debtors shall have leave (but are not required) to file and serve upon the objecting or responding party a written **reply** to any such objections or responses to the **Sale Motion** and/or any **Cure Notice** by no later than **June 2, 2003 at 12:00 p.m., prevailing Eastern time**; and it is further

ORDERED that the Debtor shall hold the **Auction** for the Assets in accordance with the Debtors' Auction Procedures at the offices of Kirkland & Ellis, 153 East 53rd Street, New York, NY 10022 , on **May 30, 2003 at 10:00 a.m. prevailing Eastern time**; and it is further

ORDERED that a **hearing** on a Motion to confirm the results of the Auction, if any, and to approve the terms of any sale(s) of assets and assumption and assignment of related executory contracts and unexpired leases will be held on **June 4, 2003, at 4:00 p.m., prevailing Eastern time** (the "Asset Sale Hearing"); and it is further

ORDERED that service and publication of the Auction Notice substantially in accordance with the procedures set forth herein shall be deemed good and sufficient notice of this Order, the Procedures Motion, the Auction, and all proceedings to be held thereon; and it is further

ORDERED that any person seeking to participate as a Qualified Bidder at the Auction must comply with the Debtors' Auction Procedures; and it is further

ORDERED that the Debtor may, upon consultation with the Creditors' Committee and the Debtors' post-petition lenders, with the consent of the Buyer (which consent may not be unreasonably delayed or withheld), extend the deadlines set forth in the Debtors' Auction Procedures, may adjourn the Auction at the Auction, extend the time for filing

objections to the Sale Motion, and/or may seek adjournment of the Asset Sale Hearing in open court, all without further notice; and it is further

ORDERED that unless a contract or lease counterparty timely objects, in writing, to any of the cure amounts contained in the Cure Notice: (a) the counterparty shall receive from the purchaser at the time of the closing of the sale of the Assets (or promptly thereafter) the cure amount stated in the Cure Notice with respect to the relevant contract or lease, if such contract or lease is assumed and assigned to the purchaser; and (b) the counterparty shall be forever barred, estopped and enjoined from asserting or enforcing against the purchaser, the Debtors or their estates any additional cure amounts in connection with the applicable lease or contract; and it is further

ORDERED that any such objection or response to a Cure Notice must set forth a specific default in any executory contract or unexpired lease, and claim a specific monetary amount that differs from any cure amounts specified in the Cure Notice; and it is further

ORDERED that pursuant to 11 U.S.C. § 365(k), upon assignment of the Assigned Contracts and Leases, the Debtors and their estates shall have no liability for any breach of such contract or lease occurring after such assignment; and it is further

ORDERED that in the event that between the time of the distribution of the Cure Notice and the Auction, the Debtors identify additional executory contracts or unexpired leases not set forth in the Cure Notice, the Debtors are hereby authorized, upon filing and serving on the counterparties to the additional executory contracts and unexpired leases, a supplemental cure notice (a "Supplemental Cure Notice") to assume and assign such additional executory contracts and unexpired leases; and it is further

ORDERED that if a counterparty does not object to the Cure Amount set forth in the Supplemental Cure Notice within five days upon receipt thereof (a) such counterparty shall

receive from the purchaser the cure amount stated in the Supplemental Cure Notice with respect to the relevant contract or lease, if such contract or lease is assumed and assigned to the purchaser; and (b) the counterparty shall be forever barred, estopped and enjoined from asserting or enforcing against the purchaser, the Debtors or their estates any additional cure amounts in connection with the applicable lease or contract; and it is further

ORDERED that any objection to a Supplemental Cure Notice must set forth a specific default in any executory contract or unexpired lease and claim a specific monetary amount that differs from the amount (if any) specified by the Debtors in the Supplemental Cure Notice; and it is further

ORDERED that upon the date the Debtors consummate an Alternative Transaction, the Debtors shall immediately pay to Buyer (in immediately available cash via wire transfer to an account designated by Buyer), a breakup fee equal to the amount set forth in the Debtors' Auction Procedures attached hereto as Exhibit 1 (the "Break-Up Fee"); and it is further

ORDERED that, notwithstanding any other Order of this Court or otherwise, the Buyer shall pay the Break-Up Fee from any proceeds of the Alternative Transaction prior to the attachment thereto of any lien, claim or encumbrance whatsoever; and it is further

ORDERED that a Break-Up Fee shall be paid to the Buyer under the terms and conditions set forth herein and in the Debtors' Auction Procedures without further Order of this Court; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order; and it is further

ORDERED that this Order is effective immediately upon its entry.

Dated: May 22, 2003



Hon. Mary F. Walrath
United States Bankruptcy Judge